UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: February 24, 2004

Opposition No. **91155699**

RE/MAX INTERNATIONAL, INC.

v.

LARRY R. HAUPERT

Andrew P. Baxley, Interlocutory Attorney:

On January 15, 2004, the Board sent a notice of default to applicant because no answer had been filed.

In response, applicant contends that the parties had been negotiating to settle this case; that opposer is awaiting a draft of a proposed trademark use agreement that opposer has indicated that it will send to him; that, having filed a consented motion to extend time to answer on July 7, 2003, which set August 29, 2003 as the due date for applicant's answer, applicant expected to receive a communication from the Board with regard thereto, but did not hear from the Board until he received the notice of default; that opposer has not commenced taking discovery herein; and that applicant, in view of his concurrently filed answer, has a meritorious defense herein. Accordingly, applicant asks that the Board set aside the notice of default and accept his concurrently filed answer.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.,* 21 USPQ2d 1556 (TTAB 1991).

The Board notes initially that, according to applicant's July 7, 2003 consented motion to extend his time to answer, the parties specified August 29, 2003 as the due date for his answer and that the Board generally grants consented motions to extend.[1] See TBMP Section 509.02. The Board notes in addition that applicant did not file any further motions to extend his time to answer past August 29, 2003. Accordingly, notwithstanding the fact that the Board did not decide the July 7, 2003 motion until well after the due date set forth therein for applicant's answer, applicant could have reasonably presumed under the circumstances that his answer was due not later than August 29, 2003.

[1] The Board further notes that, while it attempts, where possible, to notify the parties of its decision on a motion to extend prior to expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. Cf. TBMP Section 509.02.

Nonetheless, the Board finds that applicant's failure to timely answer was neither inadvertent nor in bad faith ans was caused by opposer's delay in forwarding a draft of the proposed trademark use agreement. The Board further notes that there is no evidence of any prejudice to opposer and that applicant has set forth a meritorious defense by way of the denials in his answer.

In view thereof, the notice of default is hereby set aside. Applicant's answer is accepted and made of record.

Discovery and trial dates are reset as follows.

DISCOVERY PERIOD TO CLOSE:	**5/24/04**
Plaintiff's thirty-day testimony period to close:	**4/23/04**
Defendant's thirty-day testimony period to close:	**6/22/04**
Fifteen-day rebuttal testimony period to close:	**8/6/04**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.